



Comptroller General
of the United States

Washington, D.C. 20548

McAuliffe

Decision

Matter of: Texnokpatikh
File: B-245835.2
Date: February 6, 1992

Harry Cossyphae, P.E. for the protester.
Captain Thomas J. Faulconer and Millard F. Pippin,
Department of the Air Force, for the agency.
Susan K. McAuliffe, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest against solicitation is untimely when it is not filed with either the procuring agency or the General Accounting Office before the closing time for receipt of initial proposals. Alleged improprieties that are apparent on the face of a solicitation must be filed by that time.

DECISION

Texnokpatikh protests the award of a contract to Simvoli under request for proposals (RFP) No. F63197-91-R0012, issued by the Department of the Air Force for the renovation of nine trailers in Araxos, Greece. Texnokpatikh protests the RFP's specifications. The protester also challenges the agency's failure to answer in writing Texnokpatikh's questions about the RFP's terms and protests the agency's failure to formally amend the solicitation to incorporate those questions and answers.

We dismiss the protest.

The RFP was issued on August 8, 1991. By letters of August 23 and September 3, the protester raised several questions to the agency about the solicitation (e.g., concerning the required performance period, references to specification sections not included in the firm's copy of the RFP, discount terms, availability of the trailers, and the provision of certain materials).

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By telephone conversation of September 5, the contract specialist responded to the protester's questions--essentially confirming the protester's views where they reflected a correct reading of the RFP, assuring the protester that all firms received the same solicitation materials (missing certain referenced, but inapplicable, specifications), and instructing the protester to submit its offer based on the RFP's terms. Texnokpatikh also claims it was told that any other questions would be answered during discussions. The agency considered its verbal answers to the protester clarifications which did not provide information necessary to submit proposals which was not already contained in the solicitation, or the lack of which would prejudice another offeror, and thus did not tell the other prospective offerors of the protester's questions and answers and did not amend the RFP to incorporate that information.

Five proposals were received by the September 9 closing date for the receipt of proposals. Award was made to the apparent low offeror, Simvoli, on September 25, 1991. On September 30, in response to the protester's inquiry, Texnokpatikh was told that no discussions would be conducted with offerors--the protester evidently was not yet aware of, or notified of, the September 25 award. On October 15 (by letter of October 3), Texnokpatikh filed its protest with our Office.¹

This protest, that the solicitation was defective and that the agency's responses to questions concerning the solicitation were significant and should have been furnished to all offerors by written amendment, filed after the closing date and award, is untimely. Under our Bid Protest Regulations, a protest based on alleged improprieties in a solicitation, which are apparent on the face of the solicitation, must be filed prior to the closing time for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1991); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

¹The protester erroneously alleges that the awardee failed to sign its bid. The awardee's Standard Form 1442 (which is also the cover page of the contract), at block 16, was signed by the offeror and contained the name and address of the firm, evidencing its intent to be bound by the offer as submitted. See C. R. Hipp, Inc., B-212093, Oct. 4, 1983, 83-2 CPD ¶ 418. Other missing Standard Form 1442 information identified by the protester was not required for acceptance of the offer (e.g., the date and the awardee's DUN number or CAGE code).

As the closing time neared, the protester knew or should have known that the agency did not intend to amend the solicitation and should have protested either to the agency or to our Office prior to the closing time. See American Training Aids, Inc., B-232291, Dec. 19, 1988, 88-2 CPD ¶ 600. Here, Texnokpatikh filed its protest on October 15, nearly 5 weeks after the September 9 closing date for the receipt of proposals. Further, the protester's written questions to the agency do not constitute protests. See Federal Acquisition Regulation (FAR) § 33.103(b)(3); see also Cajal Defense Support Co., B-238621, Feb. 26, 1990, 90-1 CPD ¶ 235.

Our Regulations include a timeliness requirement for protests based upon alleged solicitation improprieties to serve an important purpose--to enable the contracting agency or our Office to decide an issue while it is most practicable to take effective action where the circumstances warrant. Digital Techniques, Inc., B-243795, May 31, 1991, 91-1 CPD ¶ 520. A protest of an alleged defect in a solicitation filed after the closing time and, in this case, after the contract has been awarded, defeats this purpose.

To the extent Texnokpatikh claims the agency assured the firm that its questions would be answered during discussions, and that the agency therefore improperly failed to hold discussions with offerors, the RFP clearly notified offerors, by incorporation of FAR § 52.215-16, that discussions may not be held with offerors in the event an award was made on the basis of initial offers received. A contractor's reliance on oral information from the personnel of the procuring agency is clearly unreasonable where that information, as it is here, is inconsistent with the terms written in the solicitation. See Idaho Norland Corp., B-230598, June 6, 1988, 88-1 CPD ¶ 529. If, as the protester apparently believes, the information it received was material to proposal preparation, and was necessary to cure an otherwise defective solicitation, it was both unreasonable and impermissible under our timeliness rules for the protester to delay protesting the agency's failure to correct the solicitation defects by amendment prior to the closing time.

Similarly, the protester also alleges it was prejudiced by the oral answer to its question of whether the 220-day performance period was conditioned upon the contractor obtaining the requisite base clearances--to which the agency answered in the affirmative. The protester asserts it based its price on a 190-day performance period because clearances ordinarily take 30 days to obtain. The RFP stated that performance was to begin within 10 days of the issuance of the notice to proceed and that performance was to be

completed within 220 days. The RFP stated that the notice to proceed would be issued within 60 days after the execution of the contract, and thus effectively afforded the contractor these 60 (or so) days, in addition to the performance period, to obtain the requisite base clearances. Again, since the RFP was clear on this point, we think to the extent there was a miscommunication, the protester relied on the oral information at his own risk. See Idaho Norland Corp., supra.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel